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**Contracting Services, Inc. d/b/a CSI/Metro and Local No. 11, United Union of Roofers Waterproofers and Allied Trades.** Case 13-CA-33632

July 24, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and an amended charge filed by the Union on August 23, 1995, and June 6, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint on December 10, 1996, against Contracting Services, Inc. d/b/a CSI/Metro, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On December 23, 1996, the Respondent filed an answer to the complaint.

Thereafter, on April 9, 1997, the Respondent entered into an informal settlement agreement providing, inter alia, for the payment of backpay to the alleged discriminatee in several installments over a specified period, which was approved by the Acting Regional Director for Region 13 on April 14, 1997. In an attachment, the settlement contained the following provision:

In consideration of the Board granting a time-payment schedule, Respondent further agrees that, in the event of any non-compliance by failure to make required payments on the dates specified, or to cure any such failure within fourteen days of the specified payment date, the total amount of backpay plus interest, shall become immediately due and payable. Respondent agrees that after 14 days notice from the Regional Director of the National Labor Relations Board, on motion for summary judgment by the General Counsel, Respondent's Answer to the instant Complaint shall be considered withdrawn. Thereupon, the Board may issue an order requiring Respondent to show cause why said Motion of the General Counsel should not be granted. The Board may, without necessity of trial, find all allegations of the Complaint to be true, and make findings of fact and conclusions of law consistent with those allegations adverse to Respondent on all issues raised by the pleadings. The Board may then issue an Order providing full remedy as specified in the Complaint. The parties further agree that a Board Order and U.S. Court of Appeals Judgment be entered thereon ex parte.

By letters dated June 6 and 16, 1997, the Region requested the Respondent to comply with the terms of the settlement agreement by remitting the first payment to the discriminatee that had been due on May 16, 1997. The letters further stated that if the Region did not receive the payment by specified dates, a Motion for Summary Judgment would be filed.

No payment having been received from the Respondent, on June 30, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On July 1, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Here, the undisputed allegations in the Motion for Summary Judgment disclose that, although the Respondent initially filed an answer to the complaint, it subsequently entered into a settlement agreement which provided for the withdrawal of the answer in the event of noncompliance with the settlement agreement, and such noncompliance has occurred. Accordingly, we find that the Respondent's answer has been withdrawn by the terms of the April 14, 1997 settlement agreement, and that, as further provided in that settlement agreement, all the allegations of the complaint are true.<sup>1</sup>

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Downers Grove, Illinois, has been engaged in business as a roofing contractor. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations within the State of Illinois, purchased and received at its Illinois facility goods and materials valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6),

<sup>1</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

About August 10 and 11, 1995, the Respondent, through its representative, Fred Vath, threatened employees with termination for engaging in protected concerted or union activities.

In addition, about August 11, 1995, the Respondent, through Fred Vath, threatened employees with the filing of a lawsuit against the Union if employees tried to organize for the Union, and threatened employees with plant closure if the Union tried to organize the Respondent's employees.

Finally, about August 11, 1995, the Respondent discharged, and has since refused to rehire, employee Mitchell Terhaar, because Terhaar formed, joined, and/or assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. In addition, by discharging and refusing to rehire Mitchell Terhaar, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent has violated Section 8(a)(3) and (1) by discharging and since refusing to rehire Mitchell Terhaar, we shall order the Respondent to offer Terhaar full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all

references to the unlawful discharge, and to notify Terhaar in writing that this has been done.

## ORDER

The National Labor Relations Board orders that the Respondent, Contracting Services, Inc. d/b/a CSI/Metro, Downers Grove, Illinois, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Threatening employees with termination, the filing of a lawsuit against the Union, or plant closure if they engage in protected concerted or union activities or the Union tries to organize the employees.

(b) Discharging or refusing to rehire employees because of their union or concerted activities or to discharge employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mitchell Terhaar full reinstatement to his former job or, if that job no longer exists, to substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Mitchell Terhaar whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to Mitchell Terhaar's unlawful discharge and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Downers Grove, Illinois, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 23, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 24, 1997

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William B. Gould IV,	Chairman
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Sarah M. Fox,	Member
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John E. Higgins, Jr.,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with termination, the filing of a lawsuit against Local 11, United Union of Roofers, Waterproofers and Allied Trades, or plant closure if they engage in protected concerted or union activities or Local 11 tried to organize the employees.

WE WILL NOT discharge or refuse to rehire employees because of their union or concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Mitchell Terhaar full reinstatement to his former job or, if that job no longer exists, to substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Mitchell Terhaar whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL expunge from our files any and all references to Mitchell Terhaar's unlawful discharge and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

CONTRACTING SERVICES, INC. D/B/A  
CSI/METRO